

STATE OF NEW JERSEY – DEPARTMENT OF HUMAN SERVICES
STANDARD LANGUAGE
FUNDING AGREEMENT FOR CONSTRUCTION, PURCHASE, OR
PURCHASE AND RENOVATION OF COMMUNITY-BASED FACILITIES

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AGREEMENT effective as of the date recorded on the signature page between the New Jersey Department of Human Services (the “Department”) and the signatory agency (the “Agency”) identified on the signature page.

WHEREAS the New Jersey Legislature has from time to time authorized the Department to expend such funds as are appropriated for the construction, purchase, or purchase and renovation of Community-Based facilities for certain Department Clients; and

WHEREAS the Department has established a capital funding program to carry out such authorizations; and

WHEREAS the Agency, as a Community-Based private agency or a local government agency, is eligible and desires to utilize funding under the aforementioned appropriations;

THEREFORE the Department and the Agency agree as follows:

I. DEFINITIONS

For the purposes of this document, the following terms, when capitalized, shall have meanings as stated:

Agreement means this document, the Annex(es), all additional appendices and attachments (including the Mortgage and any approved assignments, subcontracts, amendments and modifications) and all supporting documents. The Agreement constitutes the entire agreement between the parties.

Agreement Ceiling means the amount so designated in the Annex(es) and reflects the total amount of funding committed by the Department under this Agreement.

Agreement Funds means funds committed by the Department to the Agency pursuant to this Agreement.

Annex(es) means the attachment (s) to this document containing at least the following information: a description of the Project; schedules for Project implementation and completion, Agency reporting of Project progress and Expenditures, and payment of Agreement Funds by the Department to the Agency; the commencement and expiration dates of the Agreement and the Project Period; the time period during which use of the Facility shall be restricted pursuant to the terms of Section 3.05 Facility Restrictions; the names of the Project director, the Agency officer authorized to sign this document and any other documents and papers under this Agreement, and the persons to whom Notices shall be directed; the title(s) of the Department officer(s) authorized to sign this document and any other documents and papers under this Agreement; the duties and responsibilities of the Project director; the Project budget, identifying both the Total Project Cost and the Agreement Ceiling; the sources and amounts of all funds supporting the Project; and a description of the services required to be provided in the Facility subsequent to its inspection and approval by the Department or the Division and subsequent to any required licensure. Copies of the forms of the mortgage and promissory note to be executed pursuant to Section 5.01 Mortgage Execution are appended to the Annex(es).

Community-Based means those service delivery programs or facilities which are not located on the grounds of or operated by a State institution.

Current Fair Market Value means the value of the Facility as determined by a reputable real estate appraiser approved by the Department. All appraisals must be independent of any influence either by the Agency or the Department.

When used in connection with the satisfaction of the Mortgage, the Current Fair Market Value must be determined as close in time as possible to the date of such satisfaction.

Days mean calendar days.

Department Clients means, as appropriate, clients of the Division of Youth and Family Services, the Division of Developmental Disabilities or the Division of Mental Health.

Division means, as appropriate, the Division of Youth and Family Services, the Division of Developmental Disabilities or the Division of Mental Health.

Facility means the building constructed, purchased, or purchased and renovated in whole or in part under this Agreement and includes the land on which such building is situated.

Mortgage means the mortgage or mortgages executed pursuant to Section 5.01 Mortgage Execution and also includes the promissory note(s) secured by such mortgage(s).

Notice means an official written communication between the Department or the Division and the Agency. All Notices shall be delivered in person or by certified mail, return receipt requested, and shall be directed to the persons at the addresses specified for such purpose in the Annex(es) or to such other persons as either party may designate in writing.

Project means the project described in the annex(es) for construction, purchase, or purchase and renovation of a Community-Based facility for Department Clients and may include acquisition of land for such purpose. The project may be wholly or partially financed with Agreement Funds.

Project Expenditures (also Expenditures) means expenditures made by the Agency in accordance with the Project budget contained in the Annex(es).

Project Period means the period, specified in the Annex(es) which spans the time from implementation to completion of the Project.

State means the State of New Jersey.

Total Project Cost means the amount so designated in the Annex(es) and reflects the total cost of the Project. If the Agency provides or obtains funding in addition to Agreement Funds to support the Project, the Total Project Cost will exceed the Agreement Ceiling by the amount of such additional funds.

II BASIC OBLIGATIONS OF THE DEPARTMENT

Section 2.01 Payment. Payment of Agreement Funds to the Agency shall be in accordance with Article VI of this document.

Section 2.02 Inspection and Monitoring. The Department or its designee shall inspect the Project site and shall monitor Project activities for conformity with the terms of this Agreement, as well as with all other applicable Department specifications.

Section 2.03 Referenced Materials. Upon written request of the Agency, the Department or the Division shall make available to the Agency copies of federal and State regulations and other materials specifically referenced in this document.

III BASIC OBLIGATIONS OF THE AGENCY

Section 3.01 Project Implementation and Completion. The Agency shall implement and complete the Project in accordance with the schedule outlined in the Annex(es).

Section 3.02 Expenditure of Agreement Funds. The Agency shall expend Agreement Funds for the Project in accordance with the budget contained in the Annex(es) and for no purpose other than as reflected therein. Salaries and travel expenses for Agency employees shall not be paid by Agreement Funds, except as may be specifically approved by the Department and budgeted in the Annex(es).

With exception only as expressly approved by the Department, the Agency may expend Agreement Funds only during the Project Period specified in the Annex(es). When circumstances force Agency expenditures for Project-related activities prior to the Project Period, such circumstances shall be documented by the Agency and forwarded in writing to the Department. At the discretion of the Department, part or all of such expenditures may be recoverable from Agreement Funds. The Department makes no assurance that it shall permit such recovery.

Section 3.03 Mortgage. The Agency shall execute and satisfy a Mortgage in accordance with Article V of this document.

Section 3.04 Matching Funds. The Department may require that the Agency provide or obtain matching funds for the Project. Any required Agency match shall be provided in accordance with Departmental specifications, and the source(s) and amount(s) of such match shall be recorded in the Annex(es).

Section 3.05 Facility Restrictions. The Agency shall maintain the Facility as an approved facility for Department Clients for a period of time stipulated by the Department in accordance with written Division policies. Such time period constitutes the Agreement term and is recorded in the Annex(es). Unless otherwise stipulated in the Annex(es), the Agency shall reserve 100 percent of the Facility's maximum client capacity for Division referrals, except during such times as the Division may determine that a lesser percent is adequate.

Section 3.06 Project Director. Under the direction of the Agency's governing body, the Project director named in the Annex(es) shall be responsible for all Project activities.

Section 3.07 Documents and Information. The Agency shall furnish the Department or the Division with all documents and information required by this Agreement, as well as with any additional material which may be considered necessary by the Department or the Division in support of the Agreement.

Section 3.08 Compliance with Laws. In fulfilling its commitment under this Agreement, the Agency shall comply with all applicable federal, State and local laws, rules and regulations (collectively, "laws"), including but not limited to the following: the federal Civil Rights Act of 1964, as amended; P.L. 1933, Chapter 277, of the State of New Jersey, as amended (N.J.S.A. 10:2-1 et-seq.) and P.L. 1975, Chapter 127, of the State of New Jersey (N.J.S.A. 10:5-31 et.seq.) pertaining to affirmative action and nondiscrimination in public contracts; the federal Equal Employment Opportunity Act; Section 504 of the federal Rehabilitation Act of 1973 pertaining to non-discrimination on the basis of handicap; the federal Age Discrimination Act of 1975; and the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.), including but not limited to those sections pertaining to contracting, solicitation and the provision of inducements to State legislators, officers or employees. In addition, the Agency shall comply with all applicable State and local laws relating to licensure, with standards specified by the Department as appropriate to the Facility, and with all applicable policies and procedures issued by the Department or the Division.

IV. SERVICE CONTRACT

The execution of this Agreement shall require execution of separate contract(s) or affiliation agreement(s) for the provision of services in the Facility. The parties to such service contracts or agreement(s) shall be the

Division and the Agency or, alternatively, the Division and another entity approved by the Division. The services to be provided in the Facility are described in the Annex(es).

This Article, in conjunction with Section 3.05 Facility Restrictions, binds the Agency to make the Facility available for the provision of Department-approved services for the entire term of the Agreement. This Article shall not be construed, however, to obligate the Division or the Department to continue to fund such services throughout the Agreement term. The Division may choose or may be forced to discontinue such funding; and such discontinuance may, at the option of the Department, result in termination of this Agreement. Should such termination occur, the Department may act in accordance with any appropriate option set forth in Section 5.02 Mortgage Satisfaction.

V. MORTGAGE

Section 5.01 Mortgage Execution. The Agency shall execute and deliver to the Department a promissory note and a mortgage against the Facility. Execution of such documents shall be authorized by a resolution of the Agency's governing body. The amounts of both the note and the Mortgage shall be equal to the Agreement Ceiling. At the conclusion of the Project Period, should the actual amount of Project Expenditure approved for payment by the Department differ from the Agreement Ceiling as budgeted in the Annex(es), an additional note and an additional mortgage shall be executed by the Agency in the amount actually paid or approved for payment in excess of the original Agreement Ceiling. The original Mortgage and any additional Mortgage shall be filed by the Agency for recording in the county in which the Facility is located, and proof of such filing shall be delivered to the Department within seven Days thereafter. The original Mortgage and any additional Mortgage shall continue in full force and amount

until or unless the Department acts in accordance with any of its options set forth in Section 5.02 Mortgage Satisfaction.

Section 5.02 Mortgage Satisfaction. The Department may, upon expiration or termination of the Agreement, exercise any of the following options:

- (a) If the Agreement Ceiling equals the Total Project Cost, the Department may require that the Agency transfer the Facility's title either to the Department or to an entity designated by the Department.
- (b) If the Agreement Ceiling is less than the Total Project Cost, the Department may pay the Agency for the Agency's interest in the Facility, and upon such payment the Agency shall transfer the Facility's title either to the Department or to an entity designated by the Department. In such case, the amount of the Department's payment to the Agency shall be calculated by multiplying the Current Fair Market Value of the Facility by the percentage of the original investment represented by Agency funds.
- (c) Regardless of the relationship of the Agreement Ceiling to the Total Project Cost, the Department may require payment by the Agency to satisfy the Mortgage. If the Agency must sell the Facility in order to satisfy the Mortgage, and if the proceeds of such sale are less than the amount of the Mortgage, the Department's fair share of such proceeds shall be deemed to satisfy the Agency's indebtedness under the Mortgage. The Department's fair share of the sale proceeds shall be the same percentage as the percentage of the original investment represented by Department funds. No amount less than the full amount of the Mortgage shall be deemed to satisfy the Agency's indebtedness to

the Department unless the Agency furnishes the Department with an appraisal indicating the Current Fair Market Value at the time of such sale and unless the Department is satisfied that the sale price was reasonable in light of such appraisal.

VI. PAYMENT

Section 6.01 General Payment Obligation. Except as otherwise limited or precluded in this Agreement, and contingent upon satisfactory fulfillment of the Agency's obligations as set forth in Section 3.01 Project Implementation and Completion, the Department shall pay the Agency the lesser of (a) the Agreement Ceiling or (b) an amount which bears the same percentage relationship to aggregate Project Expenditures as the Agreement Ceiling bears to the Total Project Cost.

Section 6.02 Method and Schedule of Payment. The Agency shall be paid under this Agreement in accordance with the method and schedule outlined in the Annex(es). Where applicable, the Department reserves the right to require written verification from the Project architect, contractor or other appropriate person, certifying the percentage of the Project completed to the date of Agency billing. In addition, the Department may require copies of statements from parties involved in Project activities.

Section 6.03 Payments Conditional. All payments by the Department under this Agreement shall be subject to revision on the basis of an audit conducted under Section 7.04 Audit.

VII. BOOKS AND RECORDS; REPORTING REQUIREMENTS; VISITATION AND INSPECTION; AUDIT

Section 7.01 Books and Records. The Agency shall maintain such books, records and accounts as are considered necessary by the Department to ensure

an accurate and adequate accounting of all receipts, expenditures and available funds, regardless of their source, relating to the Project. A separate bank account shall be established for Agreement Funds to ensure that they are identifiable for monitoring and auditing purposes and that co-mingling of Agreement Funds does not occur.

All books, records and documents of any kind pertaining to this Agreement shall be retained by the Agency for a minimum of four years after expiration or termination of the Agreement or ten years after completion of the Project, whichever is later. Such requirement can be waived only by written authorization of the Department.

Section 7.02 Reporting Requirements. The Agency shall report Project progress and Expenditures to the Department in accordance with the schedule and procedures established in the Annex(es).

Section 7.03 Visitation and Inspection. The Agency's books, records and facilities, as well as the Project site itself, shall be available for inspection by authorized representatives of the Department, the Division and any other appropriate unit, agency or agent of State or local government. At the discretion of the Department, visitations and inspections may be at any time and may be announced or unannounced. The Agency's obligation to make available its books and records for on-site inspection, however, shall be limited to regular business hours.

Section 7.04 Audit. At any time during the Agreement term, the Agency's overall operations, its compliance with specific Agreement provisions, and the operations of any assignees or subcontractors engaged by the Agency under Section 10.01 Assignment and Subcontractors may be subject to audit by the Department, by any other appropriate unit or agency of State government, or by a private firm retained or approved by the Department for such purpose.

Whether or not such audits are conducted during the Agreement term, a final financial and compliance audit of Project operations, including the relevant operations of any assignees or subcontractors, shall be conducted. Generally such audit shall be initiated within two years after expiration of the Project Period. Should extraordinary circumstances prevent this from occurring, the final audit shall commence as soon as feasible thereafter. The final audit shall be performed by a unit or agency of State government or by a private firm retained for such purpose by the Department or the Agency and shall follow guidelines issued by the Department. Final financial settlement of this Agreement shall be contingent upon the findings of the final audit.

All provisions of Section 7.03 Visitation and Inspection shall apply to the Agency and to any assignees or subcontractors in the case of any visitations or inspections made for the purpose of audit. The Department reserves the right to have access to all written material, including but not limited to work papers, generated in connection with any audit conducted. Should the Agency retain a private auditing firm, the Agency shall ensure that the instrument used to engage such firm contains express reference to the Department's right of access pursuant to this section.

VIII. AGREEMENT TERM; PROJECT PERIOD; AMENDMENTS AND MODIFICATIONS; CLOSEOUT

Section 8.01 Agreement Term. This Agreement shall commence and expire on the dates specified in the Annex(es). The Agreement's expiration date shall coincide with the date on which the Agency shall have satisfied its obligation to the Department as established pursuant to the terms of Section 3.05 Facility Restrictions and recorded in the Annex(es).

Notwithstanding the foregoing, the Department and the Agency retain the right, during the Agreement term, to terminate this Agreement upon six months' Notice

to the other. Should such termination occur, the Department may act in accordance with any appropriate option set forth in Section 5.02 Mortgage Satisfaction.

Section 8.02 Project Period. The Project Period shall commence on the same date as the Agreement and shall expire on the date specified in the Annex(es). The Project Period may be extended only upon written authorization of the Department.

Section 8.03 Amendments and Modifications. Except as may otherwise be provided for in this document, all amendments and modifications to the terms of this Agreement shall be consistent with Department or Division policies and shall be accomplished by means of a written agreement signed by the parties' authorized agents identified in the Annex(es). All written amendments and modifications shall become part of this Agreement and shall be appended to this document.

Section 8.04 Closeout. All financial accounts under this Agreement, with the exception of the Mortgage, shall be settled as accurately as possible within 90 Days after expiration of the Project Period and shall be settled finally based upon the findings of the final audit conducted under Section 7.04 Audit. Any unexpended Agreement Funds in the possession of the Agency shall be returned to the Department within the 90-Day closeout period. The Mortgage shall be satisfied in accordance with Section 5.02 Mortgage Satisfaction.

Except as may otherwise be provided for in this document, all non-financial obligations of both parties shall continue after the Project Period and shall cease on the effective date of expiration or termination of the Agreement.

IX DEFAULT

Section 9.01 Causes. The occurrence of any of the following shall be

considered by the Department as Agency default of this Agreement:

- (a) Agency failure, judged to be substantial by the Department, to abide by Project specifications stipulated in the Annex(es);
- (b) Agency failure, judged to be substantial by the Department, to adhere to the schedule established in the Annex(es) for Project implementation and completion;
- (c) any Agency use of Agreement Funds for purposes other than as approved by the Department and specified in the Annex(es);
- (d) Agency submission to the Department or the Division of reports or other Documents that are inaccurate or incomplete in any material respect;
- (e) Agency refusal or failure to permit the Department, the Division or a designee of the Department to inspect the Agency's facilities, including the Project site, or to review and monitor Agency administrative records and operational practices;
- (f) Agency allowance, in the absence of Departmental approval, of the placement of any lien, mortgage or other encumbrance on the Facility during the term of this Agreement, other than as provided for in Section 5.01 Mortgage Execution or identified in the Annex(es);
- (g) Agency use of Agreement Funds to employ or otherwise compensate directly or indirectly any employee of the Department;
- (h) Department discovery, in the absence of Agency disclosure, of any pecuniary or personal interest by the Agency, its officers, trustees, directors or employees in any assignment or subcontract executed

pursuant to Section 10.01 Assignment and Subcontracts:

- (i) conduct or acts, including but not limited to alleged or adjudged criminal activity, on the part of the Agency, its officers, trustees, directors or employees, which are detrimental to the reputation of the Agency or the Department;
- (j) any Agency failure, judged to be substantial by the Department, to comply with the terms and conditions of this Agreement, including any failure to maintain an approved use of the Facility pursuant to Section 3.05 Facility Restrictions.

Section 9.02 Procedures. Upon occurrence of any of the events enumerated in Section 9.01 Causes, the Department shall give Notice to the Agency that it is in default of this Agreement and shall elect either to terminate the Agreement on a date of the Department's choosing or to invoke the remedy provision set forth in Section 9.03 Remedy. Should the Agreement be terminated pursuant to this section, the Department shall act in accordance with any appropriate option set forth in Section 5.02 Mortgage Satisfaction.

Section 9.03 Remedy. In lieu of terminating this Agreement in the event of default, the Department may advise the Agency, in the Notice of default, of specific measures the Agency must undertake to remedy the default by a date of the Department's choosing. Such date shall be no more than six months from the date of the Notice of default and may be extended only at the discretion of the Department and upon Notice to the Agency. The Department's election of this provision shall in no way limit or preclude its right to terminate the Agreement upon Notice to the Agency, should the Agency fail to adhere to the remedy measures or the time schedule specified in the Notice of default.

X. MISCELLANEOUS

Section 10.01 Assignment and Subcontracts. No rights or obligations of the Agency under this Agreement may be assigned or subcontracted by the Agency, nor may the Agency sell or transfer title to the Facility, except as may be provided within the terms of this Agreement or with the prior written approval of the Department. All approved assignments and subcontracts shall become part of this Agreement and shall be subject to its terms. The Agency shall bear full responsibility, without recourse to the State or any of its subdivisions, for performance under any approved assignment or subcontract. The Agency shall forward copies of all assignment and subcontract documents to the Department and shall retain copies of them on file together with this document.

Section 10.02 Procurement. The Agency shall bear full responsibility, without recourse to the State or any of its subdivisions, for the settlement and satisfaction of any issues arising from any procurement arrangement entered into in support of this Agreement.

Section 10.03 Insurance. The Agency and any assignees or subcontractors engaged in construction or renovation of the Facility shall obtain the following types of insurance in coverage amounts judged adequate by the Department and indicated in the Annex(es):

- (a) workers' compensation;
- (b) general liability, including completed operations, broad form property damage and broad form contractual coverage;
- (c) fire insurance with extended coverage, such coverage to be equal to the replacement value of the Facility without any co-insurance; and

- (d) builder's risk, on an all-risk basis.

In addition, the Department may require the Agency and any assignees or sub-contractors to obtain a completion bond and/or to maintain any other type of insurance coverage considered necessary by the Department. The State, which shall include the Department, shall be included as an additional named insured on any insurance policy applicable to the Project. The Department may require such proof of the required insurance and/or bond as it deems appropriate at any time during the Project Period.

Section 10.04 Indemnification. The Agency shall defend, indemnify and otherwise save harmless the State of New Jersey, its agencies, departments, bureaus, boards, officials and employees from any and all claims or actions at law, whether for personal injury, property damage or liabilities, including the costs of defense (a) which arise from acts or omissions, whether negligent or not, of the Agency or its agents, employees, servants, subcontractors, material suppliers or others working for the Agency, irrespective of whether such risks are within or beyond the control of the Agency, or (b) which arise from any failure to perform the Agency's obligations under this Agreement or any improper performance.

Notwithstanding the Agency's responsibilities outlined above in this section, the State reserves the right to provide its own attorney(s) to assist in the defense of any legal actions which may arise as a result of this Agreement.

Section 10.05 Insufficiency of Funds. The Agency and the Department recognize that this Agreement is dependent upon funding through State appropriations. The Department shall not be held responsible for any breach of this Agreement arising due to insufficiency of such appropriations.

Section 10.06 Exercise of Rights. A failure or a delay on the part of the Department or the Agency in exercising any right, power or privilege under this Agreement shall not waive that right, power or privilege. Moreover, a single or a partial exercise shall not prevent another or a further exercise of that or of any other right, power or privilege.

Section 10.07 Application of New Jersey Law. The parties to this Agreement hereby acknowledge that this Agreement is governed by New Jersey Law, including the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) governing the Department's liability in any dispute that may arise under this Agreement.

Section 10.08 Title to Facility. The title to the Facility shall be and remain in the Agency until such time as the Agreement has expired or been terminated for any reason. At such time, the Department's choosing of certain options set forth in Section 5.02 Mortgage Satisfaction may result in transfer of the Facility's title either to the Department or to an entity designated by the Department.

Section 10.09 Renewability. Upon expiration of the Agreement term specified in the Annex(es), this Agreement may be renewed only on the condition that such renewal is desired and its terms are fully agreed upon by both the Department (or its successor) and the Agency in a renewal agreement. Nothing either explicit or implicit in this Agreement shall be construed as granting to the Agency an automatic right of renewal. The Department reserves the right, for any reason whatsoever, to refrain from renewing this Agreement.

Should the Agreement be renewed in accordance with the terms of this section, the Mortgage shall also be renewed; and the Agency's liability to satisfy the Mortgage shall continue under and be governed by the renewal agreement.

AGREEMENT SIGNATURES AND DATE

The terms of this Agreement have been read and understood by the persons whose signatures appear below. The parties agree to comply with the terms and conditions of the Agreement as set forth in Article I through Article X above.

BY: _____
Director, Division of Developmental Disabilities
Department of Human Services, State of New Jersey

BY: _____ L.S.
Authorized Agency Representative

NAME: _____

TITLE: _____

AGENCY: _____

ADDRESS: _____

Agreement Dated:
